during the occupation period on the ground of coercion or duress shall be:—

(a) If the value of the land concerned exceeds three thousand dollars in Malayan currency at the date when the suit is commenced, the High Court;

(b) If the value of the land concerned does not exceed three thousand dollars in Malayan currency at such date, the Sessions Court having jurisdiction in the District in which the land is situate."

As already stated, the applicant brought his proceedings by way of an originating summons. Mr. Ramani argued that the Ordinance is silent as to the procedure to be followed in bringing proceedings under section 27 thereof, and therefore section 472 of the Federated Malay States Civil Procedure Code applied. That section reads :—

"Any application to the Court in its civil jurisdiction, not being between a plaintiff and defendant and not being in a pending suit or matter, shall ordinarily be made by way of originating summons, unless some other mode of procedure for such application is prescribed by written law."

I am unable to agree with this argument of Mr. Ramani. It presupposes that the person seeking to obtain the order to set aside the registration of the memorandum of transfer is not in the position of a plaintiff, and that the person against whom the order is sought is not in the position of a defendant. The mere fact that they are described as "applicant" and "respondent" respectively in an originating summons does not mean that they are not in the position of a plaintiff and a defendant.

Further, I cannot agree with Mr. Ramani that the Ordinance is silent as to the procedure to be adopted in bringing proceedings. I should have thought that the use of the phrase "suit, action or other proceeding" in sub-section (2) of section 27 indicates that it is a suit which must be instituted. The word "action" is inappropriate in that phrase because the Ordinance only applies to the Malay States — see sub-section (1) of section 1 thereof; "action" is only applicable in the Settlements. I have a similar criticism as regards the use of the word "action" in sub-sections (4) and (5) of section 27.

An additional reason for instituting a suit for a remedy under section 27 of the Ordinance is that it is the only appropriate method for deciding a disputed question of fact.

The question of whether there was or was not coercion or duress is purely one of fact, not of law, and in order to decide that question of fact witnesses must give oral evidence as in an ordinary civil suit.

I must confess I am at a loss as to what meaning to give to the words "other proceeding" in the phrase set out above, and neither counsel could assist me. It may be that when the Ordinance has been in force for a longer time the meaning of those words could be clarified. For the present I have given a clear ruling of procedure that, in my view, proceedings under section 27 of the Ordinance should be commenced by means of a suit.

Accordingly, by consent, I made no order on the originating summons, and granted the applicant to that summons leave to file a suit in respect of the same subject matter on or before the 27th March, 1950.

*No order made.*

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## TEH SAY MOOI v. TAN CHOR LENG.

[App. Civ. Juris. (Hill, J.) March 14, 1950]

[Ipoh — Civil Appeal No. 2 of 1950]

*Landlord and Tenant — Control of Rent Ordinance, 1948, s. 12 — Functions and powers of the Rent Assessment Board.*

This was an appeal from an Order of the Rent Assessment Board, Lower Perak. The Order was as follows:— "The respondent to vacate the front portion of the premises by 30th June 1950 otherwise the applicant may apply for an ejectment order. The Board expresses the opinion that the respondent must accept any reasonable accommodation in Main Road, Bagan Datoh, and is not justified in demanding a permanent brick shop house."

Held, (1) that the first part of the Order of the Rent Assessment Board that the premises were to be vacated by 30th June 1950, was ultra vires, as the only power given to the Board by s. 12 of the Control of Rent Ordinance, 1948, is the power to give permission to a landlord to apply to a Court for an Order for ejectment; (2) that the Rent Assessment Board was correct from the evidence it heard in giving the landlord/respondent permission to apply to Court, as he had made out a prima facie case.

APPEAL from the Rent Assessment Board.

*H. T. Ong* for the appellant.

*B. K. Das* for the respondent.

**Hill, J.** : — This is an appeal from an Order made on 9th January, 1950, at Telok Anson by the Lower Perak Rent Assessment Board. The Order is as follows :—

"The Respondent to vacate the front portion of the premises by 30/6/50 otherwise the applicant may apply for an ejectment order. The Board expresses the opinion that the Respondent must accept any reasonable accommodation in Main Road, Bagan Datoh, and is not justified in demanding a permanent brick shop house."

So many opinions have been expressed on this fruitful source of litigation that I hesitate to add to them. There appears, however, to be considerable confusion of thought regarding a Rent Assessment Board's proper functions and powers in connection with Section 12 of Ordinance No. 6 of 1948 and I feel that I should endeavour to state my views in this connection simply and clearly in the hope that some of this confusion may be eliminated.

The permission granted under Section 12 by a Board to a landlord is not, on the one hand, a meaningless formality nor is it, going to the other extreme, an Order conditional or otherwise for ejectment.

The object of prohibiting a landlord from applying for ejectment until and unless he has obtained a Board's permission must surely be to prevent frivolous and unnecessary applications to the Courts. Therefore, in considering a landlord's application, it seems to me that a Board should be guided by the following principles.

Firstly, the Board should bear in mind that it is not trying the case itself, but merely deciding whether to give or withhold permission for a landlord to apply to a Court for ejectment.

Secondly, the Board is not making any order. It merely records a decision to give or not to give permission.

This means that, bearing in mind and applying the provisions of Section 13, the Board should limit its consideration of the application to deciding, after it has heard evidence by both parties, whether the landlord has made out a *prima facie* case with which to go to a Court. In other words, the Board must consider whether the landlord has made out a case which has a reasonable chance of success before a Court. If, in the Board's opinion he has, then permission and nothing else should be granted. On the other hand if, in the Board's opinion no such case has been established permission should be refused.

In the present case the first part of the Board's Order that the premises were to be vacated by 30th June, 1950, is clearly *ultra vires*. Neither Ordinance No. 6 of 1948, nor its amending Ordinance No. 61 of 1949, anywhere gives the Board power to order ejectment or give possession. In this connection, as pointed out above, the powers of the Board are defined and confined by Section 12 to giving permission to a landlord to apply to any Court for an order for ejectment.

Nor does it appear to me that the Board has any authority beyond the mere giving or withholding of such permission. In my view no conditions whatever can be attached to any permission given by the Board to a landlord such as was done in the case under review.

I consider, too, that only in very exceptional cases should a Board express an opinion as was done in this case. Such an opinion, amounting practically to a finding of fact, is one more properly to be formed by the Court.

It follows, therefore, from the opinions I have expressed that I consider that the Board was correct from the evidence it heard in giving the landlord/respondent permission to apply to a Court, which is the real purport of the Order appealed against, as he had made out a *prima facie* case.

The appeal is accordingly dismissed, with costs.

*Appeal dismissed.*

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## *IN RE* CH'NG TIAM SWEE, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) March 17, 1950]

[Selangor — L.A. Petition No. 307 of 1949]

*Administration of Small Estates Ordinance, 1949 — Jurisdiction of Registrar to determine petitions for Letters of Administration — Probate and Administration Enactment (Cap. 8).*

Section 178 of the Probate and Administration Enactment gave the Collector of Land Revenue exclusive jurisdiction over "small estates", which are defined as estates including some immoveable property and not exceeding $3,000.00 in total value. On the 31st December, 1949, this limit was raised to $5,000.00 by the Administration of Small Estates Ordinance, 1949. The question in this case was whether the Registrar had jurisdiction to determine the petition for letters of administration. The deceased died on the 10th May, 1949, and on the 16th December, 1949, his eldest son filed a petition for letters of administration in which the net value of the estate was sworn at a little more than $3,000.00.

**Held,** (1) that the jurisdiction of the Registrars to determine petitions for letters of administration of estates between $3,000.00 and $5,000.00 in value, is not taken away by the Administration of Small Estates Ordinance, 1949, as regards petitions pending when the amendment came into operation and that such jurisdiction is determined by the value of the estate as at the date on which the petition or application is filed.

**Semble:** A petitioner may, if he wishes, with the leave of the Court, withdraw such a petition in order to make an application to the Collector for distribution.

*Cases referred to:—*

(1) *Re Athlumney* (1898) 2 Q.B. 551.

(2) *Pinhorn v. Sonster* (1852) 8 Exch. 138.

PETITION for Letters of Administration.

*T. V. A. Brodie* (Senior Fed. Counsel) for Attorney-General as *amicus curiae.*

*Ng Kok Thoy* for petitioner.

The facts and argument sufficiently appear from the Judgment.

*Cur. Adv. Vult.*

**Taylor, J.** : — Ch'ng Tiam Swee died intestate at Pulau Ketam, Selangor, on 10th May, 1949, leaving three lots of Mukim Register land.

On 16th December, 1949, his eldest son filed in the High Court at Kuala Lumpur a petition for letters of administration in which the net value of the estate was sworn at a little more than $3,000.